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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

PACIFIC COAST FEDERATION OF
FISHERMEN'S ASSOCIATIONS, et al.,
Plaintiffs,

v.

GINA RAIMONDO, in her official
capacity as Secretary of Commerce, et
al.,
Defendants.

Case No. 1:20-cv-00426-DAD-EPG
Case No. 1:20-cv-00431-DAD-EPG

OCTOBER 1, 2021 JOINT STATUS REPORT

THE CALIFORNIA NATURAL
RESOURCES AGENCY, et al.,
Plaintiffs,

v.

GINA RAIMONDO, et al.,
Defendants.

Pursuant to the Court's August 20, 2021 Order Granting Motion to Stay until September 30, 2021 (Doc. No. 285, Case No. 1:20-cv-00431-DAD-EPG; Doc. No. 194, Case No. 1:20-cv-00426-DAD-EPG) ("Aug. 2021 Order"), the parties in the two above-captioned cases hereby submit this joint status report outlining their respective positions on how these cases should proceed. While each group of parties presents their specific positions below, all parties in both cases agree that these matters should continue to be stayed for two more weeks to allow the parties to continue to attempt to reach agreement on the appropriate path forward in these related lawsuits.

Federal Defendants' and State Plaintiffs' Report

On September 30, 2021, the United States Bureau of Reclamation (Reclamation), in coordination with the United States Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), and the California Department of Water Resources (DWR), requested to reinitiate consultation on the Long-Term Operation of the Central Valley Project (CVP) and State Water Project (SWP) under Section 7 of the Endangered Species Act. Attach. 1; *see also* Attach. 2 (NOAA letter), Attach. 3 (FWS letter). The Federal Defendants and Plaintiffs in *CNRA v. Raimondo* ("the State Plaintiffs") will expeditiously pursue reinitiated consultation under Section 7 of the Endangered Species Act, with goals of (a) completion of new Biological Opinions within 12 months of receipt by NMFS and USFWS of a Proposed Action from Reclamation; (b) Reclamation submitting a comprehensive Proposed Action, including all analyses necessary to support the Proposed Action, by December 2022; and (c) Reclamation preparing associated National Environmental Policy Act (NEPA) documents to implement the new Proposed Action/Preferred Alternative by October 1, 2024.

As part of the reconciliation process described in Federal Defendants' prior filings (Doc. No. 272, Case No. 1:20-cv-00431-DAD-EPG; Doc. No. 186, Case No. 1:20-cv-00426-DAD-EPG), the Federal Defendants and the State Plaintiffs have also been "fully engaged in the serious task of determining how the projects will be operated during [the] interim period [when] ESA-consultation is re-initiated." Aug. 2021 Order at 5. Specifically, the Federal Defendants and

the State Plaintiffs have been working diligently to develop a plan for operations of the CVP/SWP (“interim operations plan”) through September 30, 2022 while reinitiated consultation is ongoing. The Federal Defendants and the State Plaintiffs acknowledge that reinitiated consultation may take more than one year, but both agree that addressing interim operations for one year at this time allows the parties to plan for operations based on actual and expected conditions for the water year that starts today, October 1, 2021. The Federal Defendants and the State Plaintiffs have presented and discussed their interim operations plan with all parties in these cases, although not all parties have been able to provide feedback as of September 30, 2021, and discussions with other parties are ongoing.

In order to allow sufficient time for all parties to fully discuss the interim operations plan and attempt to reach agreement with the plaintiffs in *PCFFA v. Raimondo* (“*PCFFA Plaintiffs*”) and Defendant-Intervenors in both cases, and to obtain the required approvals from all of the parties, the Federal Defendants and the State Plaintiffs propose that these cases remain stayed for two additional weeks, through and until October 15, 2021. At that time, the Federal Defendants and the State Plaintiffs propose that the parties submit another joint status report outlining their respective positions on how these cases should proceed. Subject to obtaining the necessary approvals, this joint status report will attach the interim operations plan and describe the status of the parties’ agreement thereto.

PCFFA Plaintiffs’ Report

Federal Defendants and State Plaintiffs first shared a written proposal with *PCFFA Plaintiffs* on Monday, September 27, 2021. *PCFFA Plaintiffs* provided a written response to the Federal Defendants’ and State Plaintiffs’ proposal within two days, on Wednesday, September 29, 2021, and understand that the Federal Defendants are in the process of reviewing that response. *PCFFA Plaintiffs* also requested that the Federal Defendants and State Plaintiffs share the modeling that they have done of their proposed interim operations. *PCFFA Plaintiffs* understand that State Plaintiffs are in the process of preparing a response with the modeling and related assumptions.

1 *PCFFA* Plaintiffs do not oppose a short extension of the current stay to allow the parties
2 in both cases to continue discussing the interim operations plan. *PCFFA* Plaintiffs continue to
3 believe that it is imperative that the CVP and SWP interim operations plan for 2022 reflect the
4 very dire situation of winter-run Chinook salmon and Delta smelt, among other protected
5 species, be based on the best available science, and be consistent with state and federal law. An
6 extension of the stay by two weeks will still allow the Court, if necessary, to rule on a motion
7 related to interim operations prior to January 1, 2022.

8 **Defendant-Intervenors' Position**

9 1. Contra Costa Water District (CCWD):

10 CCWD supports a stay and believes that a 30-day stay would be appropriate to provide
11 sufficient time for reviewing and providing meaningful input on the proposed interim operations
12 plan. CCWD requests that the Federal Defendants and State Plaintiffs promptly provide the
13 modeling and any other relevant technical documentation associated with the plan to facilitate
14 the review.

15 2. Oakdale Irrigation District: Agrees to a two week stay.

16 3. Remaining Defendant-Intervenors

17 Defendant-Intervenors need adequate time and information to be able to evaluate the
18 components of any proposed interim operations plan. The affected water suppliers need to be
19 included in discussions regarding components of any interim operations plan, given California's
20 severe and ongoing drought and the obvious implications of the components of any interim
21 operations plan on the water suppliers' ability to continue to provide water service to their
22 customers. To allow sufficient time for the affected parties to obtain the information they need to
23 inform themselves about the substantive components of a potential plan, Defendant-Intervenors
24 propose that these cases remain stayed for 30 days, until November 1, 2021. Defendant-
25 Intervenors reserve all rights and positions regarding the Federal Defendants' decision to
26 reinstitute consultation on the 2019 BiOps and on any interim operations plan that may result
27 from this process.

Furthermore, agreement of State Water Contractor (“SWC”) Defendant-Intervenors to the continued stay is premised on an understanding that (i) Federal Defendants and State Plaintiffs will provide in a timely manner all analyses of the effects of the proposed interim operations plan on project operations, water deliveries, and listed species and (ii) prior to the adoption and implementation of an interim operations plan that deviates from the action analyzed in the 2019 Biological Opinions and adopted in the 2019 Record of Decision, Federal Defendants will comply with the Endangered Species Act, 16 U.S.C. 1536(a)(2), the National Environmental Policy Act, 42 U.S.C. 4332(2)(C), and the Water Infrastructure Improvements for the Nation (WIIN) Act, Pub. L. No. 114-322 (2016). To the extent that the Federal Defendants attempt to implement any of the components of the proposed interim operations during the pendency of the stay, SWC objects to such implementation and reserves all rights and positions to oppose such implementation.

DATED: October 1, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that today I electronically filed the foregoing with the Clerk of the Court via the CM/ECF system, which will send notification to the attorneys of record in this case.

/s/ Lesley Lawrence-Hammer.

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